

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

SUR DEVELOPERS AND BUILDERS, INC.  
and RAUL FAINBRAUM  
Respondents

Case Nos.: I-00-11007  
I-00-11064

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701 *et seq.*) (1981 ed.) and Title 21 Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-11007) served January 12, 2001, the Government charged Respondents Sur Developers and Builders, Inc. and Raul Fainbraum with a violation of 21 DCMR 502.1 for allegedly failing to obtain a building permit prior to engaging in land disturbing activity.<sup>1</sup> The Notice of Infraction alleged that the infraction occurred on January 4, 2001 at 5627 MacArthur Boulevard, N.W., and sought a fine of \$500.00.

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<sup>1</sup> 21 DCMR 502.1 provides: “No person may engage in land disturbing activity on any property within the District until that person has secured a building permit from the District. Approval of a building permit shall be conditioned upon submission by the permit applicant of an erosion and sedimentation plan which has been reviewed and approved by the Department.”

Respondents failed to answer the Notice of Infraction within the allotted twenty (20) days from service (fifteen (15) days plus five (5) days for mailing pursuant to D.C. Code §§ 6-2712(e), 6-2715 (1981 ed.)). Accordingly, on February 12, 2001, this administrative court issued an order finding Respondents in default, assessing a statutory penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(A) (1981 ed.), and requiring the Government to issue a second Notice of Infraction pursuant to D.C. Code § 6-2712(f) (1981 ed.). The Government served the second Notice of Infraction (00-11064) on February 27, 2001.

On February 12, 2001, this administrative court received by certified mail Respondents' plea of Admit to the charge of violating 21 DCMR 502.1 as set forth in the first Notice of Infraction (00-11007), along with a check (#2115) in the amount of \$500.00.<sup>2</sup> On February 13, 2001, Respondents faxed to this administrative court a request for the reduction or suspension of any assessed statutory penalty. As part of their request, Respondents stated that, although the Government certified serving the first Notice of Infraction (00-11007) on January 12, 2001, the envelope in which they received it had a clear post-mark of January 26, 2001. Respondents submitted a photocopy of the face of the envelope in question in support of their assertion. Respondent further stated that they received the first Notice of Infraction on February 2, 2001 "at which time we sent to you via certified mail our check #2115 in the amount of \$500.00."

On February 26, 2001, this administrative court issued an order permitting the Government to respond to Respondents' request. On March 6, 2001, the Government

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<sup>2</sup> In light of Respondents' plea to the first Notice of Infraction, the second Notice of Infraction (00-11064) shall be dismissed as moot.

recommended that, in light of Respondents' explanation and the documentary evidence associated therewith, the statutory penalty should be suspended. Accordingly, this matter is now ripe for adjudication.

## **II. Findings of Fact**

1. By their plea of Admit, Respondents have admitted to violating 21 DCMR 502.1 on January 4, 2001.
2. On January 4, 2001, Respondents engaged in land disturbing activity without a building permit at 5627 MacArthur Boulevard, N.W. 21 DCMR 502.1.
3. Although certified by the Government as having been served by mail on January 12, 2001, the envelope containing the first Notice of Infraction (00-11007) depicts a post-mark of January 26, 2001, and was not received by Respondents until February 2, 2001.
4. This administrative court received Respondents' plea along with a check (#2115) in the amount of \$500.00 on February 12, 2001.
5. In light of the delay between the January 12, 2001 certified service date of the first Notice of Infraction (00-11007) and the January 26, 2001 post-mark, on February 13, 2001 Respondents requested a reduction or suspension of the assessed statutory penalty for their untimely plea.
6. On March 6, 2001, the Government recommended the suspension of the assessed statutory penalty.

### **III. Conclusions of Law**

1. On January 4, 2001, Respondents violated 21 DCMR 502.1. A fine of \$500.00 is authorized for that violation which Respondents have paid in full. *See* 16 DCMR 3234.1(a).
2. Respondents have requested a reduction or suspension of the assessed statutory penalty. Pursuant to D.C. Code § 6-2712 (1981 ed.), if a respondent has been duly served a Notice of Infraction and fails, without good cause, to answer that Notice of Infraction within the established time limits, the respondent shall be liable for a penalty equal to the applicable fine. D.C. Code § 6-2704(a)(2)(A) (1981 ed.).
3. Based on this record, I conclude that Respondents have established good cause for failing to timely respond to the first Notice of Infraction (00-11077). Although certified as having been served by the Government on January 12, 2001, the service envelope bears a post-mark of January 26, 2001. This unexplained delay in service significantly truncated the time period within which Respondents could timely file an answer to the Notice of Infraction. *See* D.C. Code § 6-2712(e) (1981 ed.). In light of this consideration, as well as the Government's recommendation, the statutory penalty of \$500.00 assessed by this administrative court's order of February 12, 2001 shall be vacated.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, as well as the entire record in this matter, it is, therefore, this \_\_\_\_ day of \_\_\_\_\_, 2001:

**ORDERED**, that Notice of Infraction 00-11064 is hereby **DISMISSED** as moot; and it is further

**ORDERED**, that the statutory penalty of \$500.00 assessed by this administrative court's order of February 12, 2001 is hereby **VACATED**; and it is further

**ORDERED**, that, there being no further pending issue in the captioned matters before this administrative court, these matters shall be marked **CLOSED**.

/s/      **10/25/01**

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Mark D. Poindexter  
Administrative e Judge